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### MISCELLANY.

**Requisites and Proof of Common-law Marriages.**—From early times it has not always been clear what acts were necessary to the validity of a marriage. According to early civil law the consent of the parties was sufficient, but it seems doubtful whether under the early English common law a marriage without a minister was valid. In this country, however, many States have adopted the view that a marriage may be valid even without a ceremony before third parties. The rule is usually stated to be that an agreement to be married henceforth, followed by cohabitation, constitutes the so-called common-law marriage and that the subsequent cohabitation is important. It seems that the agreement alone is sufficient to consummate a common-law marriage and that the subsequent cohabitation is important only as evidence of the agreement.

Moreover, it is clear on the authorities, in the States where formal solemnization is not necessary, that although there is no proof of an actual written or oral contract, the agreement necessary to the formation of a common-law marriage may be inferred solely from the conduct of the parties. There are four rather common situations where this is likely to occur. In one class of cases the only evidence of the agreement is that the parties have lived together as husband and wife. The courts have usually held this to be evidence of an agreement from which the jury may find that there was a common-law marriage. Since such evidence does not amount to proof of a verbal agreement, we have in these cases an instance where an implied agreement is sufficient. In the second class of cases the parties have actually contracted a marriage and lived together, but this marriage is void because of some disability unknown to both parties. After the removal of the disability a new agreement of some nature is necessary. The parties ignorant of the existence and removal of the disability simply live on as before. In this situation it would seem on ordinary contract principles that there can be worked out a new agreement to be man and wife, none the less actual because implied in fact. All the elements of a contract would seem to be present. The cohabitation, without contrary evidence, is sufficient to prove that there exists the same matrimonial intent which the parties had when they originally attempted to contract a marriage. Although the pair believe themselves to be already bound, each gives the performance of matrimonial duties in exchange and as the price for the like performance by the other party. The situation would thus appear the same in effect as that in the first class of cases. A third situation is where the parties marry, both knowing of an existing disability, or simply live together meretriciously. In such cases since matrimonial intent cannot be inferred from past conduct, the courts, before finding a valid marriage, properly require affirmative proof of mutual consent to

marriage after the disability is removed. A fourth class of cases is where only one party knew of the disability when the pair were first married. Some courts hold that the mere continuing of cohabitation after the disability is removed is insufficient evidence of the requisite agreement. Other courts say the fraudulent party is estopped to show his lack of consent because of his wrong, and so find a subsequent agreement. On the analogy of ordinary contract principles, it may be argued that there is a valid agreement as soon as the disability is removed, since there is apparent mutual consent, which is ordinarily sufficient.

In the light of the above discussion an interesting case recently decided in Illinois would seem incorrect (*People v. Shaw*, 102 N. E. 1031, Ill.). The defendant married a woman in New York neither knowing of a disability. They moved to Illinois, where there was no disability, and continued to live as man and wife. The defendant then deserted this woman and married another, and was held not guilty of bigamy. As the evidence showed that neither party doubted the validity of the original ceremony in New York, there was real consent by both to be married when the parties lived in Illinois thinking themselves man and wife. It is submitted, therefore, that a common-law marriage was there contracted, and that the defendant was guilty of bigamy.—*Harvard Law Review*.

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